WP(C) 51/2007

BEFORE

THE HON'BLE MR JUSTICE RANJAN GOGOI

Heard Mr. D.K.Misra, learned Sr. Counsel for the petitioner , Mr.M.R.Pathak, learned Standing Counsel, Education and Mr. C.Baruah, learned counsel appearing for the Assam Public Service Commission.

The relevant facts may be noticed at the outset.

An advertisement was published in the Newspaper on 24.2.2005 inviting applications, inter alia, for 7 posts of Lecturers in Master of Computer Application in the two Engineering Colleges of the State. A large number of candidates including the petitioner and the Respondent No. 4 and 5 applied pursuant to the advertisement issued and took part in the selection. The petitioner was placed at Sl. No. 4 of the select list as a general category candidate though he belongs to the Other Backward Classes (OBC). Respondent Nos. 4 and 5, who also belong to the OBC, were placed at Sl. No. 5 and 6 of the select list as a OBC candidate. Subsequently, a corrigendum was issued on 3.3.2006 showing the name of the petitioner in the select list as OBC candidate. However, on 17.10.2006 a communication was addressed by the APSC to the State Govt. indicating that the recommendation of the Commission in respect of the petitioner was against an unreserved post. In the said communication dated 17.10.2006, however, it was mentioned that the petitioner belongs to the OBC category. On the said facts, apprehending that the petitioner will be by-passed in the matter of appointment, as there are only 3 posts earmarked for general category candidates, the instant writ petition has been filed. It may be put on record, at this stage, that one of the posts advertised was earmarked for being filled up by a OBC candidate.

The Respondent Nos 4 and 5, in spite of due service of notice, have chosen not to contest the present proceeding. In such circumstances, the Court will have no option but to proceed ex parte against the said Respondents.

There is no dispute that the petitioner belongs to the OBC category. In fact, in the corrigendum issued on 3.3.06, the said position is made clear. It is settled law that if a reserved category candidate is entitled to be appointed against an unreserved post by virtue of his/her merit, such reserved category candidate will have to be treated as belonging to the general Category for purpose of appointment. However, if such reserved category candidate does not come within the zone of consideration on merit for a general category post, his merit position amongst the reserved category candidates will have to be considered for deciding his entitlement to be appointed against the reserved posts keeping in mind the category to which he belongs. Applying the above law to the facts of the present case, it is clear that the petitioner, though not entitled to be appointed against a general category post by virtue of his merit, his merit position amongst OBC candidates is higher than the Respondent Nos. 4 and 5. The petitioner, therefore, will have a better right to claim appointment against the post earmarked for OBC candidates than the Respondent Nos. 4 and 5. Consequently, the State shall act accordingly at the time when appointments on the basis of select list are made to fill up the vacancies in question.

This will dispose of the writ petition.